

SCOTT N. SCHOOLS (SC 9990)
United States Attorney

BRIAN J. STRETCH (CASBN 163973)
Chief, Criminal Division

SUSAN KNIGHT (CASBN 209013)
Assistant United States Attorney

LINDSAY CRAWFORD
Law Clerk

150 Almaden Boulevard, Suite 900
San Jose, California 95113
Telephone: (408) 535-5036
Facsimile: (408) 535-5066

Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

UNITED STATES OF AMERICA,
Plaintiff,
v.
DORIS V. CARDENAS,
Defendant.

No. CR 07-00343 PVT

**UNITED STATES' SENTENCING
MEMORANDUM**

Date: November 14, 2007
Time: 11:00 a.m.
Court: Hon. Patricia Trumbull

On July 9, 2007, defendant Doris Cardenas pled guilty to delay or destruction of mail, in violation of 18 U.S.C. § 1703(b). She is scheduled to be sentenced on November 14, 2007. The Government has no objection to the Presentence Report or the sentence recommended by Probation Officer Waseem Iqbal, however, there are two notable differences between the plea agreement and the PSR that need to be resolved by the Court.

First, the calculation of the defendant's offense level under § 2B1.1 of the U.S. Sentencing Guidelines differs between the plea agreement and the presentence report. In the plea agreement, the parties agreed that the defendant's base offense level is 6. Moreover, the parties agreed that if the defendant was eligible for acceptance of responsibility, her adjusted offense

1 level would be 4. Finally, the defendant agreed not to ask for any other adjustments or reductions
2 in her offense level or for a downward departure. The presentence report concludes that the
3 defendant's total offense level is 6; her criminal history level is Category I; and the applicable
4 guideline range is 0 to 6 months. The total offense level calculated in the presentence report is
5 two points higher than that agreed to by the parties in the plea agreement because Probation
6 Officer Iqbal added a two-point enhancement for the defendant's abuse of position of trust
7 pursuant to U.S.S.G. § 3B1.3 due to her position with the U.S. Postal Service. The Government
8 did not add this enhancement in the plea agreement. Nevertheless, it is important to note that the
9 applicable sentencing range is the same for both an offense level of 4 and 6.

10 Second, in the plea agreement, the parties agreed to a sentence of three years probation, a
11 \$1,650 fine, a \$25 special assessment, and at least \$85 but not more than \$735 restitution. The
12 presentence report concludes that three years probation, 220 hours of community service, a \$25
13 special assessment, and \$85 restitution is an appropriate sentence. While the presentence report
14 concludes that the defendant is unable to pay the fine of \$1,650 agreed to by the parties, it is the
15 government's understanding that the 220 hours of community service was calculated to be the
16 equivalent of payment of the \$1,650 fine, valuing one hour of community service at \$7.50 (220
17 hours x \$7.50 = \$1,650). As the parties have entered a plea agreement pursuant to Rule
18 11(c)(1)(C) of the Federal Rules of Criminal Procedure, the government is bound by its terms.
19 However, while unsure about whether the court will view the community service requirement as
20 the equivalent of the fine and therefore adhering to the plea agreement, the government is
21 amenable to whatever option would work best for the defendant, given her current circumstances
22 and life situation.

23 CONCLUSION

24 Based on the foregoing reasons and the fact that defendant was cooperative during the
25 course of the investigation, the United States respectfully requests that the Court find that the
26 applicable sentence guideline range is 0 to 6 months and sentence the defendant to three years

27 //

28 /

1 probation, \$1,650 fine, no less than \$85 and no more than \$735 restitution, and a \$25 special
2 assessment, as agreed to by the parties.

3
4 DATED: 11/5/07

Respectfully submitted,

5 SCOTT N. SCHOOLS
6 United States Attorney

7 /S/

8

SUSAN KNIGHT
9 Assistant United States Attorney

10 /S/

11

LINDSAY CRAWFORD
12 Law Clerk